IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 1999 of 2005

Between:

Nagula Raja Mouli, S/o. Shekariah
Fair Price Shop Dealer,

R/o. Chintalamanapally, Mandal Kowtala,

District Adilabad.

..... PETITIONER

AND

1 The Joint Collector (Civil Supplies)
Adilabad, Office at Adilabad (A.P)
2 The Assistant Collector, Asifabad,
Office at Asifabad Mandal, Adilabad District.
3 The Mandal Revenue Officer, Kowthala Mandal,

Adilabad, District, A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of mandamus declaring the suspension orders passed vide Proceedings No. C/19/2004 dt. 7-2-2004 by the 2nd Respondent as illegal void, and ultra virus in the interest of justice and equity or to pass, any other order or orders as deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.MOHAMMED RAHAIL AHMED

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the stage of admission made the following ORDER:

The petitioner was appointed as a fair price shop dealer in respect of shop No.1 of Chintalamanapally village, Kowtala mandal, Adilabad district, in the year 1991. On the allegation that a tractor with 34.65 quintals of rice meant for 'food for work' programme was seized on 10.01.2004, proceedings were initiated against the petitioner, under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act'), before the first respondent. A show cause notice dated 20.01.2004, under Section 6-B of the Act, was issued to the petitioner. The petitioner submitted his explanation stating that he issued the rice under S.G.R.Y. scheme to the coolies, who were engaged in construction of SC Boys Hostel Buildings at Babasagar village on the basis of the coupons issued by the Assistant Executive Engineer and the Deputy Executive Engineer of District SC Service Co-operative Society. He denied the allegation that he was diverting the stock.

Almost on the basis of the same allegations, the Assistant Collector, Asifabad, the second respondent, issued a show cause notice dated 13.01.2004 to the petitioner directing him to explain as to why his authorization shall not be suspended. The petitioner submitted his explanation on 03.02.2004. On a consideration of the explanation submitted by the petitioner, the second

respondent passed an order, dated 07.02.2004, suspending his authorization, pending enquiry. Hence, this writ petition.

The learned counsel for the petitioner submits that there is any amount of discrepancy as to the nature of allegations in the proceedings under Section 6-A of the Act on the one hand, and those initiated by the second respondent on the other. He contends that even assuming that the explanation offered by the petitioner is not satisfactory, the second respondent could have suspended the authorization as a substantive penalty for a specific period and not indefinitely.

The learned Government Pleader for Civil Supplies, on the other hand, submits that the petitioner has to avail the remedy of appeal before the first respondent, if he feels aggrieved by the order of suspension, and the writ petition is not maintainable. He also contends that the truth or otherwise of the allegations against the petitioner can be decided only in the further proceedings but not now.

On the basis of the seizure of a tractor with certain quantity of rice, two sets of proceedings, namely the one under Section 6-A of the Act and the other under Clause 5 of the A.P. State Public Distribution System Control Order 2001, were initiated against the petitioner. He was issued show cause notices in both the proceedings and the explanations were also submitted in response thereto. The proceedings under Section 6-A of the Act are not the subject mater of this writ petition.

The second respondent issued a show cause notice, dated 13.01.2004, directing the petitioner to explain as to why his authorization shall not be suspended. This show cause notice conforms to Clause 5(4) of the Control Order. Even assuming that the explanation offered by the petitioner is not satisfactory, the second respondent could have suspended his authorization for a specific period. However, he has chosen to pass an order dated 07.02.2004 suspending the authorization of the petitioner, pending enquiry. Once the petitioner was issued a show cause notice and an explanation was submitted in

response thereto, the question of suspending the authorization, pending enquiry, does not arise. There exists a clear contradiction in terms, in the course adopted by the second respondent. Inasmuch as a show cause notice was already issued and the explanation was submitted, the suspension has to be treated as a substantive penalty and such a suspension is required to be for a specified, and not indefinite period.

The petitioner could certainly have been required to avail the remedy of appeal. However, it needs to be observed that the appellate authority is the first respondent and the very basis of the order of suspension passed against the petitioner is the pendency of the proceedings, under Section 6-A of the Act, before the first respondent. In that view of the matter, the remedy would be nugatory.

For the foregoing reasons, the writ petition is disposed of directing that-

a. The second respondent shall pass an order within two weeks from the date of receipt of a copy of this order, indicating the period for which the suspension of dealership against the petitioner shall be operative and meanwhile the petitioner shall continue to function as the dealer;

b. Once the second respondent indicates the period for which the suspension against the petitioner shall be in force, the petitioner shall not function as the dealer for such period, unless the same is assailed before an appellate or other statutory authority.

c. There shall be no order as to costs.

08.02.2005

ksld

To

1 The Joint Collector (Civil Supplies)
Adilabad, Office at Adilabad (A.P)
2 The Assistant Collector, Asifabad,
Office at Asifabad Mandal, Adilabad District.
3 The Mandal Revenue Officer, Kowthala Mandal,

Adilabad, District, A.P.

4 Two CCs to G.P. for Civil Supplies, High Court of A.P., Buildings, Hyderabad (OUT)

5 Two CD Copies